

# California MEDICAL ASSOCIATION

## NOTICES & REPORTS

### Medical Expert Panels for Malpractice Cases

IN RELATIVELY recent years there has been an appreciable increase of interest in attempts to foster better understanding and closer cooperation between the medical and legal profession.\* It is the considered judgment of many that lack of understanding or cooperation arises most frequently in the exceptional cases wherein the respective roles of the lawyer, client-patient and doctor are not understood by one or more of these three participants. Regardless of the causes for the problems which have arisen, the California Medical Association and the State Bar of California simultaneously concluded to investigate and confer on the general subject and initially on the availability of impartial medical expert witnesses in alleged medical malpractice cases.

At its 1955 meeting the Conference of State Bar Delegates adopted Resolution No. 39 which provided for the study of the problem of obtaining evidence in malpractice cases. As a result of that resolution a committee was appointed to make that study.† That committee investigated the problems individually, conferred together and with representatives of C.M.A. In August 1956, the committee submitted its report, recommending that the Executive Committee of the Conference of State Bar Delegates or the Board of Governors appoint a committee to confer with a comparable committee to be appointed by the Council of the California Medical Association and if possible to formulate a plan to alleviate the misunderstandings and establish closer cooperation between the two professions. In March of 1957, the President of the State Bar, pursuant to authority of the Board of Governors, appointed a

committee to confer with a committee appointed by the Council of C.M.A.‡ After several conferences the joint liaison committees formulated a plan as follows:

#### 1. Purpose:

A panel of physicians available for consultation with attorneys of the local or neighboring bar associations for pre-suit expert opinion and, where suit is instituted, for testimony as an expert witness.

Such panel to be used *only* for cases of alleged medical malpractice.

#### 2. Selection of Panels:

On appointment basis by the medical societies within each territorial district with approval of panel by the board of directors of the applicable local county bar association.

#### 3. Disqualifications of Panel Members:

If panel physician is treating or has ever treated or consulted upon the plaintiff patient; or if there is a relationship, business or otherwise, between panel and defendant physician.

#### 4. Make-up of Panels:

a. General practice.

b. The following basic specialty areas of medical

†C.M.A. Committee: Joseph F. Sadusk, Jr., M.D., Oakland, chairman; Donald A. Charnock, M.D., Los Angeles; Rees B. Rees, M.D., San Francisco; Donald E. Ross, M.D., Los Angeles; Francis E. West, M.D., San Diego.

State Bar Committee: Donald A. Odell, Los Angeles, chairman; James Archer, San Diego; John Finger, San Francisco; Dennis Hesston, San Mateo; Elwood Murphey, Oakland.

FRANK A. MacDONALD, M.D. . . . . President  
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\*For example, see Medical Testimony: Doctors and Lawyers Cooperate, by Audrey Barr, *Journal of the American Judicature Society*, Volume 41, Number 3, dated October 1957, page 78, and *Journal of the American Medical Association*, Volume 164, August 24, 1956, page 1931.

†Donald A. Odell, Sr., Los Angeles, chairman; R. Winfield Achor, Santa Rosa; Fitz-Gerald Ames, Sr., San Francisco; James W. Archer, San Diego; Scott L. Harrington, San Francisco; Thomas E. Heffernan, Corona Del Mar; Daniel J. Higgins, Auburn; Willard Lee Pope, Watsonville; John B. Rosson, Oakland; Alfred Thomas, Fresno; Will H. Winston, Long Beach. Liaison: John S. Frazer, Los Angeles; Edward W. Schramm, Santa Barbara.

practice, and such additional areas of specialty practice as shall be determined within each district: (1) Medicine, (2) surgery, (3) obstetrics and gynecology, (4) pediatrics, (5) pathology, (6) radiology.

**5. Administration of Panel:**

By a designated officer of the local county bar association. Names on file.

**6. Method of Call of a Panel Member:**

By complainant's request in writing to a physician on a panel list as submitted by local bar association. The physician shall notify his county medical society and the local bar association in writing of the requested consultation, giving name of attorney, complainant and physician complained against.

**7. Education of Panel:**

By a series of lectures from a joint committee of local medical and bar associations; or by special statewide indoctrination committees.

**8. Reimbursement for Consultation or Testimony:**

For the consultation and examination, review of records, preparation of report, and testimony, the physician shall receive the reasonable value of his time in accordance with the prevailing fees in his community.

**9. Panel Physicians in Court:**

No reference shall be made in court to the panel or medical or bar associations' participation therein. Judges shall be requested to adopt a rule forbidding counsel (on each side) to mention status of witness in relation to panel.

**10. Availability of Panel Members to Defense:**

a. A panel physician who consults with or examines a complainant may not, without the consent of the complainant, be examined in a civil action as to any information acquired from the complainant which was necessary to enable the physician to prescribe or act for the complainant, except as provided below.

b. A complainant may secure additional examinations or consultations from the panel list, but only if the complainant agrees in writing with the preceding panelist consulted that the latter may be examined in any civil action based upon the complaints involved.

c. A complainant may secure an examination or consultation with a second member of the over-all panel without being required to waive the confidential nature of the first examination or consultation providing the initial panelist selected reports in writing to the administrative officer of the local county bar association that the complaint is not within his area of practice; or that a second exam-

ination or consultation is necessary or advisable for stated cause.

**TERRITORIAL DISTRICTS**

1. The district organizations for panels of experts on a regional basis shall be coextensive with the councilor districts of the California Medical Association, except that the third and fourth councilor districts (both in Los Angeles County) shall be combined to function as one district. Each district shall be asked through its California Medical Association councilor to supervise the establishment of a panel.

2. Lawyers shall use the panel within their own territorial district and not elsewhere and physicians on the panels shall be expected to respond to requests from within their own councilor district and not from elsewhere.

3. Inasmuch as bar associations do not extend beyond county lines, as do some of the rural medical societies, and inasmuch as there is more than one bar association in some counties, each county bar association shall be requested to set up the appropriate administrative machinery to administer the program within its geographical area on behalf of all attorneys in the county regardless of the bar association to which they belong, and to establish such liaison with other bar associations as each county may determine desirable; lawyers in counties where there is no bar association shall be given an opportunity to join with one adjacent county where there is a bar association for purposes of administration of the panels.

At their September 1957 meetings the Council of the California Medical Association and the Board of Governors of the State Bar of California accepted and approved this plan and subsequently appointed new committees charged with the responsibility of implementing and endeavoring to make effective the plan.\* As a part of its resolution of approval, the Board of Governors further requested the committee of the State Bar to consider the necessary steps to procure by rule or statutory amendment implementation of Rule 9 (re reference in court to the panel) and Rule 10 (re availability of panel members to the defense).

The joint liaison committees met again on December 12, 1957. Also present and participating most helpfully in the deliberations were Edwin A. Heafey, Esq., president of the State Bar, Howard Hassard, Esq., counsel for C.M.A. and Rollen Waterson, executive secretary to the C.M.A. committee.

\*C.M.A. Committee: Francis E. West, M.D., chairman; Donald E. Ross, M.D.; C. J. Atwood, M.D., Oakland; Rees B. Rees, M.D.; Donald A. Charnock, M.D.

State Bar Committee: James Archer, chairman; Frank S. Balthis, Los Angeles; Dennis Hession, John Finger, Elwood Murphey.

Subject to approval by the governing bodies of the two organizations, the joint liaison committees recommended that the President of C.M.A. and the President of the State Bar request that similar joint liaison committees be appointed by the councilor of each district of C.M.A. and the presidents of each county bar association to implement the plan on the local level. It is recommended that members of the local committees be urged to confer and work with the members of the state-wide liaison committees in order that there may be as much uniformity in the program as is practicable considering the special problems that may exist in certain areas. It is anticipated that designated personnel of C.M.A. will call upon C.M.A. district councilors and the appropriate members of the county bar committees to assist in initiating the program. It is further recommended that the executive secretaries of the county medical societies be charged with the responsibility for the administration of the plan in each area. The reason for this being that in most areas the medical societies maintain permanent offices and staffs. Conversely, comparatively few county bar associations are similarly established. Therefore, it was recommended that administration of the panel list should not be delegated to a secretary but should become the duty of one of the officers of the county bar associations.

The members of the panel will be fully indoctrinated as to their role, responsibilities and procedures. Members of the county bar associations' committees shall participate in the indoctrination lectures. More detailed information regarding the indoctrination will be made available in the near future in the form of an "Indoctrination Kit." Certain forms to assure proper controls and desired statistical information were recommended by the joint committees. They will be made available to each county medical society.

Certain specific "ground rules" are recommended by the joint committees, subject to approval of the two governing bodies. They are as follows:

1. Panel members are to be appointed by the county society, not selected from volunteers.
2. Only those panel appointees who have attended the indoctrination lectures are eligible to serve.
3. Present members of public service or malpractice committees of county societies are not eligible for service on the panel.
4. Panel appointments are for one year only; a new panel is appointed each year, but the same physicians are eligible year after year.

5. Panel members, as such, are available to complainants against doctors of medicine only.

6. In each county, the panel should be representative of the practice of medicine in that area as to specialties and general practitioners.

7. The financial arrangements between the complainant's attorney and the panel member are to be by agreement between them, although a fee scale may be established by the county medical society if it so desires. Fees are to be paid in advance unless otherwise agreed between the panel member and the attorney.

Individual county medical societies and county bar associations are free, of course, to modify this proposed plan to meet local conditions and attitudes; in fact, they are free to accept or to reject the entire concept of the proposed establishment of professional liability medical panels.

It was recommended by the joint liaison committees that Rule 9 of the proposal should be implemented by the Board of Bar Governors through the Committee on Administration of Justice. However, the committees proposed a rule as follows:

"No reference shall be made in any action or proceeding to the existence of a joint county medical-bar association panel of physician experts or to the participation or nonparticipation of any witness therein."

It was the consensus of the State Bar Committee that no action is required for the implementation of Rule 10 as the participation of the physicians is voluntary and if a lawyer does not desire to adhere to the program, he can be denied the use of the panel.

As this is a new and unique program, it will take some time and planning before it can be inaugurated in some areas and before it can be tested effectively. However, there has been a somewhat similar plan in operation for several years in Los Angeles County and the experiences there were very beneficial to the joint liaison committees and should be of benefit in other localities. It is the sincere hope of all interested in the plan that it succeed and tend substantially to alleviate some of the misunderstandings that seem to presently exist.

FRANCIS E. WEST, M.D.  
President-Elect of California  
Medical Association

JAMES W. ARCHER  
Chairman of State Bar Liaison  
Committee

## CANCER BOOKLETS

### for *Your Patient*

THE CANCER COMMISSION and the California Division of the American Cancer Society wish to remind physicians of booklets and leaflets on cancer which are available without cost for distribution to patients. The busy physician will find these educational materials helpful to supplement his advice to patients. The following are recommended:

**GIVE YOUR DOCTOR A CHANCE...** This booklet describes the general nature of cancer, stresses the importance of annual checkups, and explains how the family physician makes a cancer detection examination.

**PERSONAL MEMO...** This leaflet explains the importance of routine breast self-examination and illustrates how a woman can carry out this technique.

**TO SMOKE OR NOT TO SMOKE...** This booklet reviews the research studies on this subject and states the position of the American Cancer Society.

**CANCER FACTS FOR MEN...**

**CANCER FACTS FOR WOMEN...** These companion leaflets present basic information in concise fashion.

**101 ANSWERS TO YOUR QUESTIONS ABOUT CANCER...** A 20-page booklet answering the questions most frequently asked about cancer.

**WILL A CANCER QUACK GET YOU?...** This booklet gives a brief message on the cancer quack problem.

----- USE THIS ORDER BLANK -----

AMERICAN CANCER SOCIETY  
(California Division)  
467 O'Farrell St., San Francisco

Please send me the indicated quantities of the following:

- ..... Give Your Doctor a Chance
- ..... Personal Memo
- ..... To Smoke or Not to Smoke
- ..... Cancer Facts for Men
- ..... Cancer Facts for Women
- ..... 101 Answers
- ..... Will a Cancer Quack Get You?

Name.....

Address.....

.....

## Standards for Blood Bank Sponsorship By the California Medical Association\*

1. Blood banks will operate on a nonprofit principle. A copy of the letter of exemption from the United States Bureau of Internal Revenue and the State Franchise Tax Board will be submitted. A letter will be submitted annually by the blood bank president or other responsible officer stating that the blood bank is complying with its nonprofit status. A letter will be submitted annually from the blood bank auditor stating that blood bank funds are not being used for purposes other than that for which the blood bank was formed and that during the past year there have been no substantive changes in the articles of incorporation or the by-laws of the blood bank, except as follows:

2. Blood banks will perform an acceptable community service. Adequate amounts of all types of blood will be supplied to all qualified medical facilities requesting service in the geographic area covered by the individual blood bank at minimum cost to the patient. The method by which this is accomplished is the responsibility of the individual blood bank as long as the basic effort for blood procurement follows the replacement principle.

3. Blood banks will fulfill basic technical standards as outlined by the National Institute of Health and/or the California State Department of Public Health.

4. Each blood bank will be sponsored by the county medical society where it is located. Evidence of such sponsorship will be submitted annually to the C.M.A.

5. The above information will be secured by the C.M.A. Committee on Blood Banks and will be submitted annually to the Council of the C.M.A.

\* Approved by the Council, January 11, 1958.

## Stolen Child

*(Bulletin from the San Francisco Police Department)*

ON FRIDAY, December 20, 1957, the following described infant was stolen from 519 Fell Street in San Francisco:

Baby Caroline Elizabeth Horton, 11 weeks old, 11 pounds, 12 ounces, 23 $\frac{1}{4}$  inches long, curly thick black hair with deep cowlicks, real thick and long sideburns that partially obscure a small birthmark on right side of face, large brown eyes, light brown complexion.

This baby was born with six fingers on both hands and as these were amputated shortly after birth, the amputation marks are still visible on sides of both little fingers. The mark on the left little

finger is a noticeable small dark spot and the mark on the right little finger is a small nub.

When the baby was stolen it was dressed in a white dress, yellow slip, diapers, yellow ruffled rubber panties, white shoes, yellow socks, yellow ribbon in hair, yellow sweater with pink flowers on side, yellow corduroy bonnet trimmed in white, yellow nylon blanket.

Anyone having any information on the above subject, please contact the General Work Detail of the San Francisco Police Department, SU. 1-2020, Extension 411.

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## In Memoriam

BERNSTEIN, THEODORE I. Died in Los Angeles, December 11, 1957, aged 48, of leukemia. Graduate of the University of Southern California School of Medicine, Los Angeles, 1938. Licensed in California in 1938. Doctor Bernstein was a member of the Santa Barbara County Medical Society.

DONALD, WILLIAM GOODRICKE. Died in Berkeley, December 30, 1957, aged 68, of acute myocardial infarction, coronary sclerosis. Graduate of the University of California School of Medicine, Berkeley-San Francisco, 1923. Licensed in California in 1923. Doctor Donald was a member of the Alameda-Contra Costa Medical Association.

HARRISON, WILLIAM H. Died December 10, 1957, aged 73, of heart disease. Graduate of the College of Physicians and Surgeons of San Francisco, 1907. Licensed in California in 1938. Doctor Harrison was a member of the San Francisco Medical Society.

HARSHA, WILLIAM T., JR. Died in Pasadena, November 28, 1957, aged 49. Graduate of Stritch School of Medicine of Loyola University, Chicago, Illinois, 1935. Licensed in California in 1944. Doctor Harsha was a member of the Los Angeles County Medical Association.

HARTMAN, GEORGE W. Died in San Francisco, December 24, 1957, aged 78. Graduate of Johns Hopkins University School of Medicine, Baltimore, Maryland, 1908. Licensed in California in 1909. Doctor Hartman was a retired member of the San Francisco Medical Society and the California Medical Association, and an associate member of the American Medical Association.

KELLEY, DOUGLAS M. Died in Berkeley, January 1, 1958, aged 45, of anoxia, cyanide poisoning. Graduate of the

University of California School of Medicine, Berkeley-San Francisco, 1937. Licensed in California in 1937. Doctor Kelley was a member of the Alameda-Contra Costa Medical Association.

KLEMMER, ROLAND M. Died in Salinas, November 21, 1957, aged 61. Graduate of Washington University School of Medicine, St. Louis, Missouri, 1921. Licensed in California in 1950. Doctor Klemme was a member of the Monterey County Medical Society.

NICHOLSON, JAMES W. Died in Porterville, December 4, 1957, aged 70, of metastatic carcinoma. Graduate of Vanderbilt University School of Medicine, Nashville, Tennessee, 1913. Licensed in California in 1913. Doctor Nicholson was a member of the Tulare County Medical Society.

OSTER, EDWIN A. Died in Campbell, December 20, 1957, aged 34. Graduate of the University of Illinois College of Medicine, Chicago, 1950. Licensed in California in 1951. Doctor Oster was a member of the Santa Clara County Medical Society.

REDEWILL, FRANCIS H., SR. Died in Whittier, December 20, 1957, aged 78, of uremic poisoning. Graduate of Johns Hopkins University School of Medicine, Baltimore, Maryland, 1906. Licensed in California in 1923. Doctor Redewill was a retired member of the San Francisco Medical Society and the California Medical Association, and an associate member of the American Medical Association.

VOGEL, ESTHER E. Died in Glendale, December 13, 1957, aged 44, of ovarian carcinoma with metastasis. Graduate of the College of Medical Evangelists, Loma Linda-Los Angeles, 1939. Licensed in California in 1939. Doctor Vogel was a member of the Los Angeles County Medical Association.

VRUWINK, JOHN. Died in Pasadena, November 18, 1957, aged 67. Graduate of Rush Medical College, Chicago, 1916. Licensed in California in 1917. Doctor Vruwink was a retired member of the Los Angeles County Medical Association and the California Medical Association, and an associate member of the American Medical Association.

WAYLAND, RAYMOND T. Died in San Jose, December 16, 1957, aged 67, of stroke. Graduate of Jefferson Medical College of Philadelphia, Pennsylvania, 1913. Licensed in California in 1915. Doctor Wayland was a member of the Santa Clara County Medical Society.

YOUNG, CHARLES S. Died in Los Angeles, December 14, 1957, aged 65, of pulmonary fibrosis. Graduate of the College of Physicians and Surgeons, Los Angeles, 1914. Licensed in California in 1914. Doctor Young was a member of the Los Angeles County Medical Association.